PP

v.

MUHAMAD SUHAIMI ABDUL AZIZ

HIGH COURT MALAYA, KUALA LUMPUR
AUGUSTINE PAUL J
[NO: B81-12-99]
29 DECEMBER 2001

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Defence of insanity - Whether proved on a balance of probabilities - Evidence of accused and medical evidence in support of defence - Whether rebutted - Absence of mens rea - Whether conviction could not stand*

EVIDENCE: *Burden of proof - Insanity - Balance of probabilities - Whether successfully made out against conviction of murder - Penal Code, s. 302*

The accused was charged with the murder of his wife under s. 302 of the Penal Code. The learned judge of this court found that the defence had successfully established the defence of insanity on the balance of probabilities. Accordingly, the accused was acquitted and ordered to be kept in safe custody in a mental institution pending an order from his Majesty, the Yang di-Pertuan Agong. As the prosecution filed an appeal against the learned judge's order of acquittal, hence the grounds of judgment by the learned judge.

Held:

[1] Where an accused person raises the defence of insanity, the burden of proof will be on him. The standard of proof to be discharged is on a balance of probabilities. The burden may be discharged by the accused by adducing evidence as to his conduct at the material time or immediately afterwards and by evidence of his mental condition and other relevant facts. (p 219 a-b)

[2] The accused, in his evidence, said that on the day in question he was feeling very depressed; that his mind was full of negative thoughts; that he heard voices directing him to do something to his wife; and that the voices were taking control over him. He remembered going to the bathroom and breaking down the door. He also remembered getting out of the house and getting into his car. That was a significant piece of evidence in support of the defence advanced. However, the accused was not cross-examined on that part of his evidence which was the basis of his defence. There is a general rule that failure to cross-

examine a witness on a crucial part of his evidence will amount to an acceptance of the witness' testimony. The mental state of the accused as described by him must therefore be taken to have been accepted by the prosecution. (pp 219 e-h & 220 a-c)

[3] It is settled law that the question of whether a defence of insanity has been made out or not is a matter for the court to decide. It would be observed that the medical evidence of the mental state of the accused at the time of the incident was not seriously challenged. Neither was any evidence in rebuttal led by the prosecution to challenge it. Where the medical evidence is unchallenged and there is no evidence to the contrary, a verdict of murder cannot stand (*R v. Matheson*). (pp 220 g & 221 a)

[4] The evidence led by the prosecution was the minimum necessary to hold that a *prima facie* case had been made out. No evidence was led by the prosecution to explain the circumstances that led to the killing of the accused's wife. No evidence was also led by the prosecution to cast any aspersions on the relationship between the two. It must therefore be taken to mean that, on the available evidence, the relationship between the accused and his wife was good. The evidence on record also showed that the atmosphere in the home of the accused up to about one hour prior to the incident was normal. Therefore, the accused had absolutely no motive in killing his wife, indicating that his act was abnormal. (p 221 c-h)

[5] If a serious crime like murder is committed by a man who had absolutely no rational motive to commit it, the plea of unsoundness of mind can be more easily established than in other cases. The absence of any motive supported the unchallenged evidence of the accused that he was in a disturbed state of mind at the time of the incident and that he did not know that what he did was wrong. (p 222 a-b)

[6] There was no other evidence with which this court could have displaced the medical evidence advanced by the defence. On the contrary, the nature and quality of the evidence tendered by the prosecution lent support to the defence of insanity. It followed therefore, that the accused had successfully established the defence on a balance of probabilities. (p 222 c-d)

[Accused acquitted and ordered to be kept in safe custody in Hospital Bahagia, Ulu Kinta.]

Case(s) referred to:

Juraimi Husin v. PP [1998] 2 CLJ 383 ***(refd)***
Jusoh v. PP [1963] MLJ 84 ***(refd)***
Mst Shanti Devi v. State AIR [1968] Delhi 177 ***(refd)***
PP v. Ismail Ibrahim [1998] 2 CLJ 213 ***(refd)***
PP v. Jong Chin Chin [1995] 4 MLJ 300 ***(refd)***

PP v. Nageswari [1994] 4 CLJ 419 ***(refd)***
R v. Matheson [1958] 1 WLR 474 ***(refd)***
Rajagopal v. PP [1977] 1 MLJ 6 ***(refd)***
Wong Swee Chin v. PP [1981] 1 MLJ 20 ***(refd)***
Yeo Ah Seng v. PP [1967] 1 MLJ 231 ***(refd)***

Legislation referred to:
Evidence Act 1950, s. 32(i)
Penal Code, ss. 84, 302

Other source(s) referred to:
Taylor, *Principles and Practice of Medical Jurisprudence,* 11th edn, vol I, p 549

For the prosecution - Azahar Abdul Hamid DPP
For the accused - Alias Abdullah; M/s Wrigglesworth & Co

Reported by Usha Thiagarajah

JUDGMENT

Augustine Paul J:
Muhamad Suhaimi bin Abdul Aziz (the "accused") resided at premises No 40, Lorong Setia Puspa I, Medan Damansara, Kuala Lumpur (the "premises") with his wife Faizah binti Arshad ("Faizah") and their three children named Muhamad Fariz, Sarah (PW7) and Muhamad Syafik. Their Thai maid Yawahe Waelateh also stayed with them. On 25 September 1999 Inspector Koh Jok Tian (PW5) received information about a murder at the premises. He rushed to the scene and found the body of a female, later identified to be that of Faizah, in a bathroom in the ground floor of the premises. He noticed a blood stained knife lying near the right leg of Faizah. Dr Ong Beng Beng, a forensic pathologist with the Universiti Hospital of the University of Malaya, was taken to the scene. He said that by then Faizah was already dead. He also noticed blood spots in the bathroom. Later he conducted a post-mortem examination on the body of Faizah. He found her to have 26 stab wounds. In concluding that the cause of death was due to stab wounds to the chest he also said in his report (exh. P3):

> The examination at the scene suggested that she was killed inside the bathroom. She had numerous defence wounds. This suggested that she put up a struggle before being killed. There were also numerous incised and stab wounds on her body. Ultimately she succumbed to her injuries and collapsed on the floor of the bathroom. The fatal injuries were the stab wounds to the chest which penetrated the lungs and caused massive haemorrhage. The stab wounds on her body were consistent with that caused by the knife shown by the police.

The accused was subsequently charged with the murder of Faizah under s. 302 of the Penal Code. He claimed trial to the charge.

The prosecution called eight witnesses in support of its case. Mariam binti Abdul Latif (PW4) is the mother of Faizah. On 25 September 1999 she was in her house in Kluang. As she said in her evidence:

> Pada sebelah petang lebihkurang jam 3.30 petang cucu saya Sarah telefon saya. Katanya: Mama sudah mati. Abah buat. Pada hari itu selepas Sarah bercakap dengan saya saya pun terkejut. Saya rasa macam nak rebah. Saya pun angkat telefon beri kepada suami saya.

PW7, aged eight years old now, was called by the prosecution as its seventh witness. Having conducted an inquiry I was not satisfied that she was in a position to give sworn evidence. Accordingly I ruled that her evidence shall be unsworn. The material parts of her evidence are as follows:

> Pada 25.9.99 jam lebihkurang 3.30 petang saya ingat saya ada menelefon kepada nenek saya. Saya ingat apa yang saya cakap kepada nenek saya. Saya cakap pada nenek saya: Mama sudah mati, abah buat. Sebelum saya telefon nenek saya, saya sedang menjaga adik saya yang sedang tidur. Pada masa itu saya nampak bapa saya tendang pintu bilik air. Saya dengar mama saya menjerit. Masa itu mama saya ada di dalam bilik air. Kemudian saya kejut kakak iaitu Kakak Ramlah. Saya nampak abah saya keluar dari bilik air. Masa itu saya lihat baju dan tapak kaki abah berdarah. Selepas itu baru saya telefon nenek saya. Sebelum telefon nenek saya ada cakap dengan jiran. Saya cakap dengan jiran selepas saya telefon nenek saya. Saya ta' ingat warna baju yang dipakai oleh ayah saya.

The prosecution had also obtained a subpoena against Yawahe Waelateh to be called as a witness. However, the subpoena could not be served on her as she had gone back to Thailand. PW5 had also contacted Interpol to trace her. He was informed that the witness could not be traced. PW5 tendered the necessary documents in support of this part of his evidence (exh. P11A, B, C). He then said that he had recorded a statement from Yawahe Waelateh on 4 October 1999. In giving the statement she spoke to him in the Kelantan dialect which he understood. She affixed her signature to the statement that she had given. As I was satisfied that sufficient evidence had been adduced by the prosecution to explain the non-availability of Yawahe Waelateh I admitted her statement in evidence (exh. P12) pursuant to s. 32(i) of the Evidence Act 1950. The material parts of exh. P12 read as follows:

Bagi menjawab soalan saya:

> Saya dilahirkan di kampong Pujuk, Ampor Meang, Chamwat Pattani, Thailand. Saya adalah anak kedua dari (3) orang adik beradik. Buat masa ini kedua adik beradik saya berada di Pattani, Thailand. Saya mendapat pendidikan di Sekolah Pondok sehingga darjah 4. Saya sudah berkahwin dan mendapat (4) orang anak. Bagaimanapun suami saya meninggal (2) tahun yang lepas. Selepas itu saya bekerja di kilang membuat tilam untuk menyara anak-anak saya.

Pada awal tahun ini, seorang perempuan Thailand telah menawarkan saya untuk bekerja di sini dan dia kemudian telah menguruskan untuk saya datang ke sini sebagai pembantu rumah. Pada bulan April saya telah datang ke Malaysia dan bekerja sebagai pembantu rumah di Shah Alam mengantikan seorang Indonesia. Selepas sebulan di sana, saya balik semula ke Thailand dan lebih kurang seminggu kemudian datang semula ke sini dan bekerja di tempat sekarang iaitu dengan simati (Faizah) dan suaminya (Muhamad Suhaimi) dengan pendapatan RM400 sebulan. Di sana saya tinggal bersama mereka dan juga (3) anak mereka iaitu Muhamad Fariz, Sarah dan Muhamad Shafiz. Kerja saya di sana adalah sebagai pembantu rumah di mana saya melakukan semua kerja termasuk menjaga anaknya, memasak, mencuci pakaian dan sebagainya. Di rumah tersebut, saya diberikan satu bilik di tingkat atas dan saya tidur di bilik tersebut sementara pasangan tersebut tidur di sebuah bilik besar juga di tingkat atas. Anak-anak mereka pula tidur di bilik bersebelahan dengan bilik mereka.

Pada kebiasaannya saya bangun tidur jam 6 pagi untuk membuat persiapan bagi anaknya Muhamad Fariz untuk ke sekolah. Fariz dan simati biasanya bangun lebih kurang jam 6.30 pagi. Selepas itu, simati akan menghantar Fariz ke sekolah dengan kenderaannya pada jam 7 pagi. Kadang-kadang simati dan Muhamad Suhaimi pergi kerja bersama dan kalau tidak ke tempat kerja bersama, Muhamad Suhaimi akan bangun lebih lewat iaitu jam tujuh lebih. Sarah juga bangun tidur jam tujuh lebih dan akan menaiki van untuk ke sekolah.

Pada 25.9.99 iaitu hari Sabtu, saya bangun tidur jam 6 pagi dan simati bangun lebih kurang jam 7 pagi. Muhamad Suhaimi pula bangun jam tujuh lebih diikuti oleh anak-anaknya. Pada pagi tersebut simati telah memasak makanan iaitu mee untuk sarapan pagi kerana pada hari tersebut mereka tidak bekerja. Selepas makan sarapan pagi iaitu lebih kurang jam lapan lebih, simati telah mengajak saya mengikutinya ke kedai untuk membeli barang. Pada masa tersebut, anaknya Syafiz juga ikut bersama sementara anak-anak dia yang lain berada di rumah bersama dengan bapa mereka. Kami keluar dengan kereta kancil yang dipandu simati. Setelah selesai membeli barang kami balik ke rumah dan sampai di rumah pada jam sembilan lebih. Pada masa tersebut anak-anak dia dan Muhamad Suhaimi masih berada di rumah dan saya kemudian telah membantu simati memasak di dapur. Pada jam lebih kurang 1 tengahari simati telah menyediakan makanan untuk suaminya dan mereka makan bersama. Selepas makan, mereka keluar dan duduk di ruang tamu. Saya pula makan tengahari selepas itu. Setelah selesai makan dan mengemas, saya mandi dan sembahyang. Selepas sembahyang iaitu jam lebih kurang 2 petang, saya keluar dan duduk di ruang tamu menonton televisyen. Pada masa tersebut, simati berada di hadapan televisyen bersama Syafiz, Muhamad Suhaimi pula duduk di meja makan sementara Fariz dan Sarah pula juga di ruang tamu sedang bermain. Selepas 10 minit duduk di sana, saya masuk ke bilik iaitu di bilik tingkat bawah bersebelahan bilik air dan tidur.

Pada jam tiga petang lebih, semasa saya sedang tidur di bilik tersebut telah dikejutkan oleh Sarah dimana dia pada masa tersebut dalam keadaan menangis dan berkata 'Kakak! Tolong mama dalam bilik air dengan abah'. Saya kemudian bangun dan keluar. Saya kemudian menjengok ke dalam bilik air yang pintunya separuh terbuka, pada ketika tersebut saya lihat Muhamad Suhaimi sedang mengadap ke bahagian dalam bilik air dan simati juga berada dalam bilik air tersebut. Di tangan Muhamad Suhaimi pula saya lihat ada pegang sebilah pisau. Saya juga ada dengar suara simati dari bilik air tetapi tidak tahu apa yang dikatakan. Apabila melihat keadaan tersebut, saya merasa takut dan lari keluar ke sebelah rumah jiran dan menyorok di sebalik sebuah kereta. Selepas lebih kurang 5 minit kemudian, semasa saya sedang menyorok di kereta tersebut, saya lihat Muhamad Suhaimi keluar dengan memandu keretanya warna perak (silver) dengan laju dan keluar dari lorong tersebut dan menghilangkan diri. Saya kemudian masuk dan dapati ketiga-tiga anak mereka masih berada di dalam rumah dan Sarah dan Syafiz dalam keadaan menangis. Saya kemudian pergi ke arah bilik air dan melihat ke dalam bilik air tersebut dapati simati sedang tertiarap dengan keadaan berlumuran darah dan tangan simati masih bergerak. Saya juga lihat ada sebilah pisau dalam keadaan berlumuran darah berdekatan kaki kanan simati dalam bilik air tersebut. Saya kemudian menyuruh Sarah menelefon nenek dia di Kluang dan Sarah telah menggunakan telefon rumah tersebut dan menelefon neneknya di Kluang. Pada masa tersebut, saya dengar Sarah cakap 'Wan! Mama dah mati, abah yang buat'. Selepas itu telefon diletakkan. Tidak berapa lama kemudian telefon berdering semula dan Sarah menjawab dan kemudian memberikan kepada saya dimana dia menyatakan atuknya yang mahu cakap dengan saya. Saya kemudian telah menceritakan kepada atuknya apa yang sudah berlaku dan minta supaya dia datang segera ke sini. Selepas itu, saya telah tanya Sarah, hendak cari siapa dan dia telah memberitahu saya supaya ke rumah Mak Pah dan kami kemudian ke sana. Sampai di rumah Mak Pah saya telah menceritakan apa yang berlaku kepadanya dan dia telah datang bersama dengan anak perempuannya. Kami kemudian masuk tengok simati dan dapati dia tidak bergerak lagi. Selepas itu, Mak Pah balik dan datang semula dengan suaminya untuk melihat apa yang berlaku. Selepas itu, saya bersama anak-anak simati telah dibawa dan duduk di rumah jiran (tidak tahu nama).

S: Pada hari kejadian iaitu sebelum kejadian berlaku, adakah Muhamad Suhaimi ada keluar rumah?

J: Setahu saya tidak ada.

S: Adakah sesiapa yang datang ke rumah mereka pada hari tersebut?

J: Tidak ada.

S: Sebelum kamu masuk tidur pada petang hari kejadian, adakah kamu nampak apakah jenis pakaian Muhamad Suhaimi?

J: Dia memakai baju lengan pendek warna putih dan seluar pula saya tidak perasan.

S: Semasa kamu terkejut dari tidur dan lihat dalam bilik air, kamu lihat apa jenis pakaian yang dipakai Muhamad Suhaimi?

J: Dia memakai baju warna putih lengan pendek dan seluar pula saya tidak perasan.

S: Bagaimana kedudukan pintu bilik air semasa simati dan Muhamad Suhaimi berada di dalam?

J: Pintu bilik air separuh terbuka.

S: Semasa Muhamad Suhaimi keluar dengan memandu kereta, adakah kamu nampak apa jenis pakaian yang dipakainya?

J: Saya tidak pasti kerana dia dalam kereta.

S: Adakah kamu tahu no pendaftaran kereta tersebut?

J: Saya tidak ingat tetapi kereta tersebut adalah kereta yang digunakan oleh Muhamad Suhaimi pada kebiasaannya.

S: Apakah jenis senjata yang dipegang oleh Muhamad Suhaimi semasa dalam bilik air?

J: Saya lihat dia memegang pisau.

S: Di sebelah tangan manakah Muhamad Suhaimi memegang pisau semasa berada di dalam bilik air?

J: Saya tidak pasti tetapi dia ada memegang pisau di tangan.

S: Adakah kamu nampak sesiapa lagi dalam bilik air tersebut pada ketika tersebut?

J: Saya hanya nampak Muhamad Suhaimi dan simati sahaja dalam bilik air.

S: Adakah kamu nampak sesiapa selain anak-anaknya dalam rumah tersebut pada ketika itu?

J: Tidak ada.

S: Apakah kamu tahu apa pekerjaan simati dan Muhamad Suhaimi?

J: Simati memberitahu yang mereka bekerja di syarikat minyak.

S: Kebiasaanya jam berapa mereka balik dari kerja?

J: Kebiasaannya jam 6 petang.

S: Bagaimana perhubungan antara simati dan suaminya sejak kamu bekerja dengan mereka?

J: Saya lihat hubungan mereka baik.

S: Adakah kamu pernah lihat mereka bergaduh?

J: Saya pernah lihat simati menangis tetapi tidak tahu sebab apa dan tidak pernah lihat mereka bergaduh.

S: Pada hari kejadian, adakah kamu ada tengok mereka bergaduh atau bertengkar?

J: Tidak ada.

S: Ada apa-apa lagi kamu hendak pinda atau tambah berkenan percakapan kamu

J: Tidak ada.

S: Adakah kamu cakap benar?

J: Benar.

Percakapan dibaca balik dan diakui benar.

t.t. t.t.

Tandatangan Saksi Tandatangan Perakam

Shahriman Adli bin Mohd Suhanis (PW8), a medical assistant attached to the Kemaman Hospital, Terengganu said that on 27 September 1999 he received the accused as a patient. He handed over the personal belongings of the accused to Chief Inspector Ali Hanafiah bin Hashim (PW6).

At the close of the case for the prosecution the defence elected not to make a submission of no case to answer. I was satisfied that the prosecution had made out a *prima facie* case against the accused and, accordingly, called upon him to enter his defence. He elected to give evidence on oath.

The defence advanced was one of unsoundness of mind at the time of the commission of the crime. In his evidence the accused said that on 25 September 1999 he was in his house. He was seated at the dining table and was feeling very, very depressed. His mind was full of negative thoughts. He then said:

> I was smoking one cigarette after another trying to think what is going on in my thoughts. I was feeling negative about a lot of things. Then I heard voices talking to me directing me to do something to my wife. It was like taking over my mind. It was taking over control of me. I remember going to the bathroom and breaking down the door. Then I don't know what happened. I remember getting out of the house and getting into my car. That is all.
>
> Selepas saya ditangkap saya ada dirujuk kepada pakar sakit jiwa. Nama pakar itu ialah Dr Rabaiah. Semasa diperiksa oleh doktor itu saya ada memberitahu beliau tentang latarbelakang kes ini.

In his cross-examination the accused said:

> Saya tidak tahu bahawa pada hari kejadian saya ada memasuki dalam bilik air dan telah menikam isteri saya bertubi-tubi sehingga beliau meninggal. My memory was very confused at that time.

In support of his defence the accused called as his witness one Dr Rabaiah binti Mohd Salleh (DW2), a psychiatrist attached to the Hospital Bahagia, Ulu Kinta. Her basic medical degree is from Pakistan. She obtained her Masters degree in psychiatry from the Universiti Kebangsaan Malaysia and a Diploma in Forensic Psychiatry from the Institute of Psychiatry, University of London. She has been a consultant psychiatrist since 1994. She has examined many cases of mental illness and has given evidence in court about ten times. On 6 February 2001 the accused was referred to her. As she said in her evidence:

> Pemeriksaan yang telah saya lakukan ke atas En Muhd Suhaimi ialah pemeriksaan mentalnya. Pemeriksaan mental merangkumi (includes) temubual-temubual yang kerap, pemeriksaan makmal dan juga dari pemerhatian segala perbuatan dan tingkahlaku beliau semasa bersama kami. Untuk melengkapkan pemeriksaan saya keluarga Muhd Suhaimi telah ditemubual, keluarga Faizah telah ditemubual dan kami juga telah temubual kawan-kawan sekerja mereka. "Mereka" maksud Muhd Suhaimi dan Faizah. Menjadi kebiasaan apabila saya perlu membuat sesuatu laporan mengenai kes-kes yang berat seumpama ini sesi-sesi perbincangan, in other words, clinical group discussions akan diadakan bersama Pengarah Hospital saya sendiri dan pakar-pakar psychiatry yang lain untuk second opinion.
>
> Hasil daripada pemeriksaan diagnosa yang saya telah berikan ialah Muhd Suhami ada menghidap sejenis penyakit psikotik yang dinamakan delusional disorder. Delusional disorder ialah sejenis penyakit dan psikotik. It is of the jealous type. Delusional disorder itu ada kurang-kurang 4 kategori iaitu persecutory, grandiose, erotomanic type and jealous type and mixed type. Kes ini diberi diagnosa delusional disorder jealous type. Kesimpulan yang telah saya buat selepas pemeriksaan yang rapi dan intensive saya berpendapat bahawa semasa kejadian beliau di dalam keadaan yang tidak waras. Di masa kejadian beliau di dalam keadaan yang tidak waras dan tidak tahu bahawa perbuatan beliau itu adalah salah dari segi undang-undang.

In her cross-examination she said:

> En Suhaimi telah ditemubual berkali-kali. Pada hari-hari awal kemasukan beliau ke hospital kami perbualan kami agak susah. Hasil dari temubual Muhd Suhaimi boleh menceritakan segala apa yang telah berlaku. Ini termasuk perbuatan beliau menikam isterinya. Antara symptoms yang menandakan adanya penyakit mental/ psikotik yang saya telah perolehi ialah suara-suara ghaib (auditory hallucinations), visual hallucinations. Daripada situ timbulnya delusion di mana beliau percaya bahawa arwah isterinya telah berlaku curang. Suara-suara ghaib adalah apa yang Muhd Suhaimi beritahu kepada saya. Dan juga dari temubual saya dengan keluarga En Suhaimi.

In her re-examination she said that the accused was under her observation from 6 February 2001 to 17 April 2001. I considered it necessary to subject DW2 to some examination in order to determine whether to accept her evidence. The questions that I asked and the answers that DW2 gave run as follows:

Court: Is it possible to ascertain a person's mental condition for a period about 1 1/2 years prior to the examination?

A: I thank the Court for recognising our difficulty. We, the psychiatrists, get as much information as we can from as many sources as possible and that includes interviewing both sides of the family, interviewing their colleagues, getting detailed information from the police. We also obtained the autopsy report from the pathologist together with repeated questions of En Suhaimi to see the consistency of his information with the rest of the information we get from other sources. The group discussions that we had with the other psychiatrists includes all the psychiatrists interviewing En Suhaimi themselves at great length. That is the best we could do to arrive at our conclusion.

Court: Essentially your finding is based on your interviews?

A: It is the interview plus the intensive observation for three months. For observation we look at his behaviour, his sleep pattern and his emotions.

Court: Is it possible for you to distinguish a malingerer from a genuine one?

A: It is quite easy for a psychiatrist to identify a malingerer. In this case I am absolutely positive that En Muhd Suhaimi was not malingering.

Court: Can you explain why the accused explained the events of 25.9.99 to you when in Court today he said he does not know.

A: There is something special about therapist - patient relationship. Therefore as a summary of all my interviews I was able to get the necessary information. One needs psychiatric skills in asking such questions.

The defence then closed its case. The prosecution did not call any evidence in rebuttal. In his submission learned counsel for the accused said that the defence had succeeded in raising the defence of legal insanity. He referred to the case of *Yeo Ah Seng v. PP* [1967] 1 MLJ 231 and said that the absence of any motive on the part of the accused is an important indication of unsoundness of mind. In his reply the learned Deputy Public Prosecutor said that the prosecution had adduced sufficient evidence of the *actus reus*. With regard to *mens rea* he referred to the evidence of DW2 and left the matter to the court.

The defence of insanity is governed by s. 84 of the Penal Code which reads as follows:

> Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

It is settled law that where an accused person raises the defence of insanity the burden of proof will be on him (see *Juraimi bin Husin v. PP* [1998] 2 CLJ 383; *PP v. Ismail bin Ibrahim* [1998] 2 CLJ 213; *Jusoh v. PP* [1963] MLJ 84). The standard of proof to be discharged by the accused is on a balance of probabilities (see *Rajagopal v. PP* [1977] 1 MLJ 6; *PP v. Nageswari* [1994] 4 CLJ 419; *PP v. Jong Chin Chin* [1995] 4 MLJ 300). The burden may be discharged by the accused by adducing evidence as to his conduct at the material time or immediately afterwards and by evidence of his mental condition and other relevant facts. At the close of the case for the defence I had found that the defence had successfully established the defence of insanity on the balance of probabilities. Accordingly, I ordered that the accused be acquitted as he was insane at the material time and did not know that what he did was wrong in law though I was satisfied that the act was committed by him. I therefore ordered that he be kept in safe custody in Hospital Bahagia, Ulu Kinta pending an order from the Yang di-Pertuan Agong. This appeal is by the prosecution against my order of acquittal. I shall now consider the evidence on record that compelled me to arrive at the conclusion with which the prosecution is dissatisfied.

The accused said in his evidence that on the day in question he was feeling very depressed; his mind was full of negative thoughts; he heard voices directing him to do something to his wife; the voices were taking over control of him. He remembered going to the bathroom and breaking down the door. He also remembered getting out of the house and getting into his car. This is a significant piece of evidence in support of the defence advanced. As Taylor says in his book entitled *Principles and Practice of Medical Jurisprudence*, 11th edn, vol I at p. 549:

> Delusions, hallucinations, and illusions may all occur as symptoms of dementia or other psychotic illness. A delusion may be defined as a mistaken belief which has for the patient the force of conviction, and is firmly held despite all evidence to the contrary. A hallucination is a sensory perception which does not correspond to any stimulus from the outside world; whereas an illusion is a sensory perception, which although produced by external stimulus, is misinterpreted by the patient in purely subjective terms.
>
> Examples will make these three descriptive terms clear. If a man believes that he has lost all his money and is suffering from a fatal illness, despite the production of concrete evidence that he is still solvent, and has no demonstrable physical disease, then he is suffering from delusions. If he hears voices or sees visions which no one else can hear or see, and which are in fact projection of his own fantasy, then he is hallucinated …

> All these symptoms will be seen to have in common that severance of the patient's subjective experience from external reality which we have seen is characteristic of insanity. Under the influence of such severance from reality the patient's conduct is naturally disordered, and in this way his insanity may be made manifest.

However, the accused was not cross-examined on this part of his evidence which is the basis of his defence. There is a general rule that failure to cross-examine a witness on a crucial part of his evidence will amount to an acceptance of the witness's testimony (see *Wong Swee Chin v. PP* [1981] 1 MLJ 20). The mental state of the accused as described by him must therefore be taken to have been accepted by the prosecution. The evidence of the accused was supported by the testimony of DW2 who had him under her observation from 6 February 2001 to 17 April 2001. As a result of her examination of the accused she found that he was suffering from a psychotic disease namely delusional disorder. She concluded that at the time of the incident the accused was of unsound mind and did not know that what he did was wrong in law. The cross-examination of DW2 was not directed towards a challenge of the results of her examination of the accused. As there was no serious challenge of the evidence of DW2 by the prosecution I myself subjected her to some questioning in order to determine whether her evidence could be accepted. In answer to my questions she said that it is possible to ascertain a person's mental condition for a period about 1 1/2 years prior to the examination; that her finding is based on her interviews with the accused and observation of his behaviour, his sleep pattern and his emotions; that she is absolutely certain that the accused was not malingering and that one needs psychiatric skills to obtain information from the accused which explained why the accused could not narrate the events of 25 September 1999 in court.

It is settled law that the question of whether a defence of insanity has been made out or not is a matter for the court to decide. It will be observed that the medical evidence on the mental state of the accused at the time of the incident was not seriously challenged. Neither was any evidence in rebuttal led by the prosecution to challenge the evidence of DW2. In the circumstances the defence advanced is not one that can be rejected with ease. As Thomson CJ (as he then was) said in *Jusoh v. PP* [1963] MLJ 84 at p. 86:

> It is, of course, well settled that the question of whether the defence of insanity is made out or not is a question for the jury (see, for example, *Rivett* 34 Cr App R 87) though we know of no case, neither have we read of one, where the only medical evidence has been in favour of insanity and where a jury has been virtually invited to find against insanity on the facts of the case. Generally, there is medical evidence on both sides and the jury have to decide on a consideration of the evidence as a whole which body of medical evidence they will accept.

There is authority for the proposition that where the medical evidence is unchallenged and there is no evidence to the contrary a verdict of murder cannot stand. In this regard I refer to *R v. Matheson* [1958] 1 WLR 474 where Lord Goddard CJ said at p. 478:

> If there are facts which would entitle a jury to reject or differ from the opinion of the medical men, this court would not, and indeed could not disturb their verdict, but if the doctor's evidence is unchallenged and there is no other on this issue, a verdict contrary to their opinion would not be 'a true verdict in accordance with the evidence'.

In the absence of any medical evidence being led by the prosecution to challenge the testimony of DW2 it is my duty to ascertain whether the other evidence on record is sufficient to render the medical evidence led by the defence untenable. It must be noted that the evidence led by the prosecution was the minimum necessary to hold that a *prima facie* case had been made out. No evidence was led by the prosecution to explain the circumstances that led to the killing of Faizah. Exhibit P12 reveals that the morning of 25 September 1999 in the household of the accused passed by as it would in any other home. The accused and Faizah were not working on that day. Faizah got up in the morning and prepared the breakfast. After breakfast she went shopping with one of her children and Yawahe Waelateh leaving behind the accused with the other two children. They returned home at about 9am Faizah then went to the kitchen to prepare lunch. At about 1pm the family had lunch. They then watched television in the hall. Yawahe Waelateh who joined the family at about 2pm then went to the room which was adjacent to the bathroom to have a nap. She was then alerted of the incident by PW7 at about 3pm. She also said that the relationship between the accused and Faizah was good. Even though she had seen Faizah crying she did not know the reason for it. However, she had never seen the accused and Faizah quarrelling even on the day of the incident. No other evidence was led by the prosecution to cast any aspersions on the relationship between the two. Evidence of animosity between the two, if any, could have been elicited from PW4 and PW7 which was not done. It must therefore be taken to mean, on the available evidence, that the relationship between the accused and Faizah was good. The evidence on record also shows that the atmosphere in the home of the accused up to about one hour prior to the incident was normal. In the circumstances I am compelled to conclude that the accused had absolutely no motive in killing Faizah indicating that his act was abnormal. In commenting on the absence of motive to an offence of murder Barakbah LP said in *Yeo Ah Seng v. PP* [1967] 1 MLJ 231 at p. 233:

> Again, although motive is not an ingredient in the offence of murder, the jury's attention should have been drawn to the fact that lack of motive was an important indication of insanity …

In *Mst Shanti Devi v. State* AIR [1968] Delhi 177 it was held that generally in a case where the sanity of the accused is called in question motivation for the crime with which he is charged assumes unusual importance because if a serious crime like murder is committed by a man who had absolutely no rational motive to commit it the plea of unsoundness of mind can be more easily established than in other cases. The absence of any motive supports the unchallenged evidence of the accused that he was in a disturbed state of mind at the time of the incident as described by him. DW2 had said that the accused was of unsound mind at the time of the incident and that he did not know that what he did was wrong in law. The doctor who examined the accused at the Kemaman Hospital on 27 September 1999 could have shed some light on the mental state of the accused at that time. However, he was not called to testify by the prosecution. Thus there was no other evidence with which I could have displaced the medical evidence advanced by the defence. On the contrary the nature and quality of the evidence tendered by the prosecution lent support to the defence of insanity. It follows that the evidence of DW2 being unchallenged with no other evidence to rebut the defence advanced a verdict contrary to the medical evidence would not be a true verdict in accordance with the evidence on record. In the upshot I held that the accused had successfully established the defence advanced on a balance of probabilities and, accordingly, I made the consequential orders.